To
Shri. Asit Kadayan,
Advisor (QoS),
Telecom Regulatory Authority of India (TRAI),
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg, (Old Minto Road)
New Delhi - 110002, India

Subject: **Sharechat's responses to the Consultation Paper for Over the Top Communications Services**

Dear Sir,

We thank you for taking the leadership to set out a detailed, and deliberate consultation paper on the regulation of app based communication services (**Consultation Paper**). Efforts such as this by the TRAI provide thought leadership to domestic and global regulators on the process of developing policy in a transparent and consultative framework.

To let you know a little about us, Sharechat is a social networking and regional content platform built by Indian and for Internet users in India. Our founders are a team of engineers from IIT Kanpur, who had stated the platform with aim to provide Indian local language users with an ability to discover, create and share content. Our platform embraces the diversity of the Indian users, by ensuring that they can communicate in their local language. Infact, Sharechat today supports [*insert official number*] Indian languages, and specifically does not support communication in English (in favour of the Indian vernacular user).

As a homegrown social media platform, we believe that our experiences would provide a unique insight on how to create a vibrant ecosystem for local Indian communications applications and the potential areas for mutual assistance between companies (such as ours) and the government.

While we have, in Annexure A, provided a detailed set of responses to the questions set out by the Consultation Paper, we would like to highlight a few over-arching issues for your consideration at the outset.

(a) ***Social communications platforms bring significant consumer and economic benefits***

By drastically reducing the cost of engagement, Sharechat unlocks the latent demand for communication in rural and urban India. Our goal is to provide a platform for Indians to generate and share their views, needs and aspirations.

A user on our platform can directly message another user. Additionally, a user can also generate information (in text, audio or video) for the public at large for their consumption. In turn, they can receive information, which can be directed solely for their consumption or from a publicly available post.

Apart from social networking, these functionalities allow our users to also create micro-markets, increasing the pace of economic activity and in many cases creating new markets where none existed.

Farmers create groups on Sharechat to discuss cropping patterns, input costs and rent agricultural equipment. Students across the country receive online tuitions from a retired schoolteacher in West Bengal. Housewives advertise and sell home made products in cities across the country.

As a result, empowering our citizens with the ability to communicate has allowed them to increase revenue and income, thereby directly contributing to our GDP.

Moreover, businesses that were traditionally conducted physically, such as transportation, banking, hospitality, and retail trading, are now provided seamlessly online. It is inevitable that with the advent of time, an increasing share of such businesses would be conducting through online platforms.

Therefore, creating barriers or imposing costs to access low cost online communications platforms would only bring our local businesses to a disadvantage as compared to our global competitors in participating in the digital economy.

(b) ***Licensing of online business can be counter-productive to the goal of a self starting local innovation economy***

As a homegrown startup, we believe that licensing is counter-productive and detrimental to the growth of home grown startups. While we welcome regulation of platforms, we would like to highlight that any form of licensing would deter local innovation. A license to conduct business would typically translate into:

(i) medium to high upfront fees;
(ii) additional cost of compliances, and
(iii) the threat to the closure of business for alleged non-compliances.

The need to allocate capital towards compliance and regulatory costs, even without developing a competitive product, would deter most investors from supporting a local startup.

From our experience, this would be extremely detrimental to the local ecosystem. Teams such as ours, which are home grown, are often better suited to understand the nuanced needs of the next billion users in India. The alternative lies in the dominance of global and regional multi bullion dollar incumbents with deep pockets to avoid to meet any compliance costs.

We believe that the key public policy goals discussed in the Consultation Paper can be met through sectoral regulation, rather than licensing, with equal efficacy.

(c) ***Obligations should not impose disproportionate costs on Indian companies***

As discussed above, often such licensing and regulatory obligations are imposed on domestic entities with greater focus. This imposes a disproportionate cost on local companies doing business from India for India. On the other hand, lack of regulatory clarity or the threat of regulatory barriers often incentivize global organisations to either structure their key entities offshore or avoid a presence in India altogether. Moreover, non-resident organizations currently run communications applications in violation of domestic laws, and often at cross-purposes with domestic interests.

Therefore, we would recommend identification of malpractices by offshore applications, and ensuring parity in regulatory burden and action with domestic technology companies.

(d) ***Regulations should aim to meet legitimate public policy goals for the government***

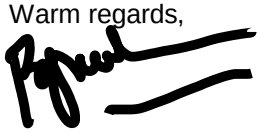
We do acknowledge the need to develop policy to help achieve legitimate policy goals, especially those in relation to the prevention of fake news, and the proliferation of illegal content.

Since our inception Sharechat has co-operated with law enforcement authorities to help identify individuals proliferating illegal information. Recently, we have also been part of deliberations with the Ministry of Electronics and Information Technology, and the Election Commission of India to develop a roadmap to fight fake news and hate speech.

We believe that the Indian legal system, whether under the Indian Penal Code, 1860 or the Information Technology Act, 2000 (among others) provides sufficient safeguards on identification and regulation of criminal behavior online. However, as a responsible Indian platform we would welcome any measure to streamline and bring efficiency in the interaction between regulators and platforms.

We thank you for giving us the opportunity to contribute to this exercise. We would welcome and look forward to any follow on engagement and interaction on this issue.

Warm regards,



Berges Y. Malu
Head of Public Policy

Annexure: Our specific responses to the queries posed by the Consultation Paper

A. **Chapter 2: Definition of OTT Services in different jurisdictions and contexts**

1. ***Which service(s) when provided by the OTT service provider(s) should be regarded as the same or similar to service(s)being provided by the TSPs? Please list all such OTT services with descriptions comparing it with services being provided by TSPs.***

We believe that the nature of TSPs as the holder of a scare resource, and provider of unique services are significantly distinct to that of online communications platforms such as ours.

A few points of departure between TSPs and online communications platforms are as below:

Issue	TSP	Online Communication Platform
Monopoly Power	• Granted the monopoly power to access spectrum and right of way to build infrastructure • Regulation prevents abuse of monopoly power, and ensures fair and equal treatment. • Licensing norms ensure investment protection by limiting the entry of competitors.	• Operate in a far more competitive business environment. • Sharechat today acts as a competitor, to many global and much larger firms. Tomorrow, another small team of technology enthusiasts may build a product to rival ours, with no barrier to entry or regulation to limit their access.
Unique services	• TSPs utilize allocated to provide voice, text and internet access to consumers across the country. • TSPs are structured around the PSTN, a global, decentralized and universal system for connection between two identified systems. • Citizens to choose from a limited set of service providers, and have to mandatorily depend on the PSTN and CLI services provided by the TSP.	• Online communications platforms do not have the unique right to provide communication services to individuals. • Reliant of TSPs for connectivity and access • Our users can shift from our platform to any of the thousands of other services at an instance.
Nature of communications	• TSPs provide real time peer-to-peer communications.	• Sharechat, and other online communications platforms allow for both peer-to-peer and mass consumption of information. • This information can be shared both on a realtime basis, as well as for time delayed consumption. Content shared on our platforms can be a mix of audio, video and text.

	• Communication service can be bundled to service other core functionalities: e.g. payments, trading, travel.

As a result, the commonality of a few aspects of the services provided by online communications platforms does not make them similar to TSPs.

2. ***Should substitutability be treated as the primary criterion for comparison of regulatory or licensing norms applicable to TSPs and OTT service providers? Please suggest factors or aspects, with justification, which should be considered to identify and discover the extent of substitutability.***

The claim that that voice call and SMS text services are being substituted by online communications platforms is incorrect. The ITU itself in its report on *Regulatory challenges and opportunities in the new ICT ecosystem* has stated that online messaging platforms have *significant additional functionality… while a proportion of IP messaging is a substitute for SMS services, not all such messaging would have been SMS traffic*. It recognizes our belief that by providing new and richer forms of communication, *the number of messages sent has grown significantly.*

The substitutability test proposed in the Consultation Paper has several challenges. The argument assumes that a platform with the same services as a voice or text is akin to a TSP. This in essence would be similar to comparing a bicycle to a bus. While both provide transportation services, their services cannot be considered either similar or substitutable.

As a subjective standard, a regulatory body would determine the 'substitutability' of an application. This would create policy uncertainty on an online platform that uses communications features, even as an ancillary feature to its core purpose (e.g. chat systems in payments applications). Moreover, it may make companies risk averse to innovate on communications applications to avoid the risk of being classified as an OTT platform.

The use online communications platforms as opposed to SMS or voice call services is also context dependent. This also makes it difficult to classify online platforms as OTT services.

A user may find an online platform better suited than TSP services to relay messages or ask for a query from a large group, through a public post. On the other hand directly reaching out to a known user may be easier through a text or a call.

The choice of the service may depend on the nature of the communication. An image or a voice recording of an event may be better communicated through an online platform.

A user may prefer using the chat functionality in an application to confirm the conclusion of a transaction. For example, drivers on a ridesharing platform may prefer sending a message in the application to confirm arrival. A person may confirm receipt of funds in the chat section of a payments application. And a buyer may confirm the delivery of goods on a trading platform. However, in each case, they may prefer TSP services of texting or calling to engage for ancillary communications related to the transactions.

The decision can also be dependent on the urgency and location of the user. For example, a person on the road or travelling may prefer a quick call to a video call.

And finally, the choice may be determined on the basis of the pricing of the services by the TSP itself. If a user has an unlimited SMS pack, then they may prefer texting as opposed to online social media. However, while travelling out of station, a user may prefer calling using data on 'roaming'.

As a result, the several nuances to be considered to determine substitution and the significant degree of subjectivity to make this determination make OTT classification a challenging and unproductive effort.

B. **Chapter 3: *Economic Aspects***

3. ***Whether regulatory or licensing imbalance is impacting infusion of investments in the telecom networks especially required from time to time for network capacity expansions and technology up-gradations? If yes, how OTT service providers may participate in infusing investment in the telecom networks? Please justify your answer with reasons.***

We would like to state that differences in regulation do not necessary result in regulatory imbalances. While the Consultation Paper does set out the separate obligations on a TSP, it does not delve into the reason for the existence of such obligations.

As discussed in greater detail in section D below, a network service provider with access to a scare resource would have unique obligations. However, the Consultation Paper assumes that any difference in regulatory obligations amounts to imbalance, and suggests that imbalance negatively impacts investments in telecom infrastructure.

While we realize that TSP revenues, especially with respect to value added services have been declining. As stated by the ITU, the mere fact that an industry faces a business challenge due to technology, should not give rise to the need for regulation of its competitors. It is difficult to think of any industry today that does not face disruption in their business models due to technological change.

Changes in technology will result in changing business models, as is evidenced by the rise of data first TSPs in countries such as India and Singapore. Infact, even the TRAI in its consultation paper on the ***Regulatory Framework for Internet Telephony*** recognizes this fact by stating,

> "*The Authority is of the view that increasing revenue realisations from data services due to increasing internet traffic will not only compensate for the loss of conventional voice traffic but will also increase the revenue potential...*"

Researchers globally have suggested greater partnerships between OTT services and TSPs to generate revenue. Even with the existence of net neutrality norms, some of the measures that TSPs can look to adopt include:

(i) **generating new revenue sources**: by developing new features such as IPTV or new services such as mobile money;
(ii) **encouraging the adoption of high bandwidth products**: by providing free access to high value applications such as gaming services or video distribution platforms.

As regards the remunerating TSPs for network usage, we would like to highlight that such remuneration can be divided in two sections.

The first would be charges to a TSP for interconnection with a competing network. In such cases, the TSP should ideally be rewarded for making available their network, as

the ultimate beneficiary does not remunerate the TSP for the service provided. This approach is common across most infrastructure networks. The Electricity Act, 2003 and its regulations also set out inter-connection charges for networks, while also imposing open access obligations on network to provide connectivity.

In the second, the Consultation Paper assumes that OTTs act as a free rider on the TSP network to provide their services to customers. The congestion claimed by the Consultation paper is essentially data traffic, which is paid for by consumers and generates a significant portion of the current revenue for TSPs.

Moreover, it is fallacious to assume that online platforms do not participate in infrastructure investments. Online services have the greatest incentive to ensure access to speedy connectivity. Infact, technology companies the world over have contributed to financing internet cables, exploring TV white space initiatives to connect rural areas, and set up telecom towers and data centers.

4. ***Would inter-operability among OTT services and also inter-operability of their services with TSPs services promote competition and benefit the users? What measures may be taken, if any, to promote such competition? Please justify your answer with reasons.***

The need for inter-operability arises from ensuring a fair and competitive environment, especially in situations where the regulation by design creates monopoly like structures. As a result, the RBI recommends interoperability of ATM machines, and the TRAI recommends interoperability of mobile numbers (based on spectrum and CLI number allocation) and set top boxes (broadcasting spectrum).

On the other hand, online communications platform currently operate in a highly competitive market. Given that their services are provided at near zero cost, with the constant risk of new competitors, no such risk exists in the market in its current form.

However, there may be future competition risks arising from the online communication platform economy. These risks would relate to the lock in effects of users in online platforms, especially in ancillary services such as payments, financial services, and e-commerce. However, given the cross sectoral nature of risks, they would be better resolved by the subject matter regulator (i.e. the Competition Commission) rather than the TRAI.

C. **Chapter 4: *Factors relating to the regulatory framework***

5. ***Are there issues related to lawful interception of OTT communication that are required to be resolved in the interest of national security or any other safeguards that need to be instituted? Should the responsibilities of OTT service providers and TSPs be separated? Please provide suggestions with justifications.***

As a responsible domestic Indian social media platform, we regularly engage with several regulatory and law enforcement authorities on issues relating to illegal content on our platforms. Our measures include responding to specific legal requests to take down offensive content. Moreover, we as a platform proactively engage with authorities, whether it is the Ministry of Electronics and Information Technology, or the Chief Election Commission on developing measures to identify and remove illegal, hateful and fake content.

However, we would like to state at this juncture that while Indian organisations such as ours are proactive in taking these measures. In our experience, we note that several global and regional applications operate in the OTT eco-system disregarding local legal

obligations that have been clearly enshrined in the Information Technology Act, 2000, the Indian Penal Code, 1860 among others.

We also welcome some of the measures suggested by the government in reforming the Intermediary Guidelines Rules, 2011 to address these issues. The appointment of local officers, establishment of domestic response units, and use of technology to proactively comply with domestic norms should be required from all social media and OTT communications entities operating in the Indian market.

However, we would request that the regulatory obligations on platforms be streamlined and limited. Establishing multiple regulators, and mandating compliance with differing standards in law would only increase the cost of compliance, and achieve limited public policy benefit for the government as a whole.

Therefore, while we do recognize that there exist issues with respect to lawful interception of communications. We believe that the existing regulatory framework, and the reforms proposed by the government (along with active monitoring and enforcement) should be sufficient in addressing these concerns.

6. ***Should there be provisions for emergency services to be made accessible via OTT platforms at par with the requirements prescribed for telecom service providers? Please provide suggestions with justification***

NA.

D. **Chapter 5: *Possible regulatory and market approaches***

7. ***Is there an issue of non-level playing field between OTT providers and TSPs providing same or similar services? In case the answer is yes, should any regulatory or licensing norms be made applicable to OTT service providers to make it a level playing field? List all such regulation(s) and license(s), with justifications.***

Online communications platforms and TSP operate on separate layers by design. Consequently, even though there might be differing regulatory obligations on a TSP, online communications platforms, in India do have significant regulatory obligations proportional to the role.

The Consultation Paper sets out the various regulations applicable to a TSP. However we would like to state that the regulations stated govern its special characteristics, as stated below:

Issue	TSP regulatory standard	Online communication platform obligation
Utilization of scare resources	• The licence agreement imposes mandatory rollout obligations to ensure utilization of spectrum, interconnection norms to regulate the transfer of information across networks. • These practices are largely similar to any network service such as electricity or water resources.	• Given that the online platform does not control the access to any specific resource, there are no complementary rollout obligations. • Moreover, any access to the network by the communications platform is controlled by the TSP. As a result, interconnection obligations for such platforms are moot.

Standardization of access	• The obligations relating to identification of callers ensure common number allocation.	• Mobile number allocation is only available to TSPs and not online platforms. Infact many communication platforms rely on the number allocation by TSPs to validate accounts.
Competition regulation	• As an entity with the access to spectrum, it becomes essential to prevent the concentration of market power in the hands of a few entities. As a result, entry, exit and the merger of firms in the business are highly regulated.	• On the hand online platforms are not inherently concessions granted by the state. As a result, any anti-competitive effects must be regulated ex-ante, on the basis of evidence and as determined by the subject matter regulator, i.e. the Competition Commission.

However, the Consultation Paper also notes that both TSPs and OTTs are equally regulated under the Information Technology Act, 2000 with respect to their obligations on due diligence standards to maintain safe harbor protections, lawful interception, and encryption norms. While TSPs have an additional obligation as per the terms of the license agreement to not ensure 'bulk encryption', this is a function of the contractual terms decided by the government and is not a legislative standard.

Therefore, as clarified above, while there exist differing legal obligations, these do not necessarily translate into an unequal regulatory playing field. Both TSPs and online platforms are equally liable to provide a duty of care to its consumers, and take measures to prevent the proliferation of unlawful content. Moreover, both TSPs and online platforms are equally required to be responsive to legitimate requests from law enforcement authorities. As discussed in section C above, we do recognize that some non-resident online platforms are non compliant with Indian regulatory standards. However, we believe that this is better resolved by reform in special regulation (in relation to intermediary regulations) and improvement of cross border law enforcement processes (such as letter rogatory's and mutual legal assistance treaties).

8. ***In case, any regulation or licensing condition is suggested to made applicable to OTT service providers in response to Q.7 then whether such regulations or licensing conditions are required to be reviewed or redefined in context of OTT services or these may be applicable in the present form itself? If review or redefinition is suggested then propose or suggest the changes needed with justifications.***

As discussed above, we do not see any case for licensing of online platforms. We would welcome any measure to level the playing field between resident and offshore online platforms, which often flout domestic regulatory standards and act against domestic interests. We would recommend that these entities be made as responsive to law enforcement requests as Indian owned and resident technology companies such as Sharechat.

9. ***Are there any other issues that you would like to bring to the attention of the Authority?***

Not applicable.